

JUN 22 2009

DAVID G. MELAND, CLERK
BY
DEPUTY _____

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

RODALE, INC.

§

Plaintiff,

§

VS.

§

Case No. 4:08cv120
(Judge Schell)

U. S. PREVENTIVE MEDICINE, INC.,

§

Defendants.

§

**MEMORANDUM ADOPTING REPORT AND
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636. On May 22, 2009, the report of the Magistrate Judge was entered containing proposed findings of fact and recommendations that Plaintiff's Motion to Dismiss (Dkt. 79) be GRANTED and that Plaintiff's claims be dismissed without prejudice to the refiling of such claims. The Magistrate Judge further recommended Defendant's counterclaims should remain for future adjudication and disposition.

The court, having made a *de novo* review of the objections raised by Plaintiff and Defendant, as well as the record relating to Plaintiff's motion to dismiss, is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and the objections of the parties are without merit. Therefore, the court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of this court. Plaintiff's Motion to Dismiss (Dkt. 79) is GRANTED, and

Plaintiff's claims are dismissed without prejudice to the refiling of such claims. At this time, Defendant's counterclaims remain for future adjudication and disposition.

IT IS SO ORDERED.

SIGNED this 19th day of June, 2009.



RICHARD A. SCELL
UNITED STATES DISTRICT JUDGE